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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,366	10/03/2003	Gregg D. Wilensky	07844-617001	4008
21876	7590	06/12/2007	EXAMINER	
FISH & RICHARDSON P.C. P.O. Box 1022 MINNEAPOLIS, MN 55440-1022			SMITH, JEFFREY S	
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/678,366	WILENSKY, GREGG D.
	<b>Examiner</b>	<b>Art Unit</b>
	Jeffrey S. Smith	2624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 05 April 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-48 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-48 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 03 October 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>3/07</u> .	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

### ***Response to Arguments***

Applicant's arguments filed April 5, 2007 have been fully considered but they are not persuasive.

Applicant argues that the objections to the drawings have been overcome. The drawings have been amended to show the features of the dependent claims. This drawing objection is removed, although applicant can improve the quality of the drawings by including reference numbers for the drawing elements.

A drawing objection is made for the independent claims where detailed illustration is essential for proper understanding of the invention based on the remarks applicant made about the difference between the independent claims and the prior art and the lack of clarity provided by the text of the written description as discussed below.

Applicant argues that the rejection under 35 U.S.C. 101 to claims 25-42 has been overcome. Applicant is incorrect, this rejection is maintained because these claims are still directed to non-statutory subject matter. The Examiner has offered guidance to overcome this rejection.

Applicant argues that the rejection under 35 U.S.C. 102 (e) has been overcome. Applicant is incorrect, this rejection is maintained. Applicant alleges that the prior art does not disclose determining a first tone value for a location within the image based upon attributes of pixels within a first neighborhood surrounding the location, the first tone value specifying a local weight for a first tone adjustment in the image. This is

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incorrect, the prior art discloses this element. In particular, the attributes of the pixels in each neighborhood associated with an IRP are used to determine tone values. For example, Kokemohr discloses "an image editing function assigned by the user and associated with both the coordinates of each of the plurality of defined image reference points, and the image characteristics of one or more pixels neighboring the coordinates of each of the plurality of defined image reference points" (Kokemohr col. 6 lines 1-6). The image characteristics of the pixels disclosed by Kokemohr are the same as the attributes of pixels recited in claim 1. The IRPs are the same as the claimed neighborhoods, because "the IRPs serve as a graphical representation of an image modification that will be applied to an area (or neighborhood) of the image." The alleged distinctions between the prior art and the claimed invention are not visible to the Examiner.

Applicant argues that the rejection under 35 U.S.C. 103 has been overcome, but has failed to advance any remarks that support this conclusion. Therefore, this rejection is maintained.

### ***Drawings***

The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c).

The current drawings fail to show attributes of pixels within a first neighborhood surrounding the location that determine a first tone value, a local weight for a first tone

adjustment that is specified by the first tone value, attributes of pixels within a second neighborhood surrounding the location that determine a second tone value, a local weight for a second tone adjustment that is specified by the second tone value, and an image at the location adjusted by the first and second tone adjustments. The written description is unclear as to the shape and position of each neighborhood as it surrounds the location. For example, the word "surrounding" in the English language generally means to enclose on all sides, yet page 7 of the specification states that a neighborhood that surrounds the location can be one side of a square. The figures themselves provide no examples of the location and the surrounding neighborhoods as recited in the independent claims.

The remarks from applicant assert determining a first tone value for a location within the image based upon attributes of pixels within a first neighborhood surrounding the location as a basis for patentability over the prior art, yet the remarks by themselves merely state this claim element without adequately describing how this feature is distinguished from the art. The figures do not show the asserted patentable features including the location within the image, the attributes of pixels, the neighborhood surrounding the location, and the local weight of the first tone adjustment.

A figure that at least shows an example of a location surrounded by a first neighborhood with attributes that determine a first tone value, the first tone value specifying a local weight for a first tone adjustment in the image, and the location surrounded by a second neighborhood with attributes that determine a second tone value, the second tone value specifying a local weight for a second tone adjustment in

the image, and the image at the location adjusted by the first and second tone adjustments is needed for a proper understanding of the invention..

Examples of figures that show a location surrounded by first and second neighborhoods that use attributes to weight tone adjustment values is shown by Kokemohr in Figures 1, 2 and 4, while Figure 5 shows one neighborhood's weighting of a tone adjustment value.

Given the fact that applicant is arguing that claim 1 requires a first tone value for a location within the image based upon attributes of pixels within a first neighborhood surrounding the location, given the fact that applicant argues that the prior art does not disclose this claimed feature, given the fact that figure 1 of Kokemohr shows a first neighborhood surrounding (where surrounding is defined by applicant at page 7 of the specification) the location where attributes of pixels (as clearly shown by the attributes of each pixel in a given IRP neighborhood of figure 1 of Kokemohr) are used to determine a tone adjustment value (as clearly shown by, for example, "lighten 40%" in figure 1 of Kokemohr), given the fact that other figures of Kokemohr also show this feature of claim 1, and given the fact that applicant provides no figure showing this claimed element other than a figure with several boxes that contain the words determine multiple tone values for location(s) in received image based on local neighborhood and adjust image at location(s) using tone adjustments according to corresponding tone values, applicant is required to provide a drawing showing an image with a location, neighborhoods surrounding the location, attributes of pixels, local weight of each tone adjustment value, and other features of the claim that applicant argues are missing from

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the prior art in order for those of skill in the art to properly understand the differences between the prior art and the invention.

No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 25-42 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 25 recites a software product tangibly embodied in a machine readable medium. Page 18 of the application states that this includes a propagated signal. Therefore, this claim is non-statutory. The phrases "tangibly embodied in a machine-readable medium" recited in claim 25 as originally filed and "embodied in a tangible machine-readable medium" recited in claim 25 as amended appear to have the same meaning. Applicant has given no indication to the contrary. One way for applicant to indicate that these claims do not include a propagated signal is to delete the propagated signal from the specification. Claims 26-42 also can be software products embodied in a propagated signal, and are also non-statutory.

Also, "machine-readable medium" should be "computer-readable medium" and "data processing apparatus" should be "computer processing apparatus" to be clear that

the claimed "software product" is computer software that is read from a computer readable memory and executed by a computer processor.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-43 and 48 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,728,421 issued to Kokemohr ("Kokemohr").

For claims 1 and 25, Kokemohr discloses determining a first tone value for a first location within the image based upon attributes of pixels within a first neighborhood surrounding the location, the first tone value specifying a local weight, determining a second tone value, and adjusting the image at the location using first and second tone adjustments according to local weights (see col. 8 lines 5-14 and 40-48).

For claims 2 and 26, the tone value is determined based upon a neighborhood intensity (see column 8 line 27).

For claims 3 and 27, the value of the local attribute depends on luminosity (see col. 8 line 27).

For claims 4 and 28, the value depends on a maximum color value (see col. 8 line 27).

For claims 5 and 29 the value is a weighted average of luminosity and maximum color (see for example col. 13 lines 53-59).

For claims 6 and 30, the neighborhood intensity is determined by averaging pixels (see for example eq. 3 where the weights are equal).

For claims 7 and 31, the Gaussian weights are discussed in col. 14 lines 60-67.

For claims 8 and 32, the difference weights are discussed beginning at col. 8 line 58.

For claims 9 and 33, the user input is discussed beginning with the title.

For claims 10 and 34, the shape can be defined by the user as discussed for example in col. 17 lines 37-40 and as shown in Fig. 4.

For claims 11 and 35, the first neighborhood and the second neighborhood are identical when the first tone value is for color and the second tone value is for luminosity, see for example col. 8 line 42.

For claims 12 and 36, a graphics object is identified, for example, as shown by element 32 in Fig. 4.

For claims 13 and 37, the identified graphics object includes lines, such as the apples shown in Fig. 4.

For claims 14 and 38, additional tone values are determined as shown for example in Fig. 5.

For claims 15 and 39, the additional tone value is determined based on first and second tone values as discussed with respect to the mixing function at col. 8 line 40.

For claims 16 and 40, the user input specifying size of the neighborhood is shown in the "area" section of Fig. 5.

For claims 17 and 41, the user input for strength is shown in Fig. 5.

For claims 18 and 42, negative symmetry is shown by the inversion function of col. 10 line 59.

For claim 43, the digital camera ipso facto has a CCD device (col 19 lines 20-25).

For claim 48, the digital camera is a portable device.

For claim 19, the local adjustment tool is shown in Fig. 5.

For claims 20 and 21, the image capturing device includes a digital camera, as discussed in col. 19 line 24.

For claims 22 and 23, the display device is shown in Fig. 4.

For claim 24, the user interface to set a value is shown in Fig. 5.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 44-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kokemohr.

For claims 44 and 45, Kokemohr does not explicitly state that the adjustment tool provides feedback to the digital camera. However, the Examiner takes Official Notice that it is well known in the digital camera art to include an image processing algorithm in the digital camera to adjust image features such as color and luminance. Therefore, it would have been obvious to one of ordinary skill in this art at the time of invention to use the adjustment tool to provide feedback to the digital camera for the benefit of adjusting image features such as color and luminance.

For claim 46, Kokemohr does not explicitly state that the digital camera is located in a PDA, phone, or both. However, the Examiner takes Official Notice that it is well known in the digital camera art to include a camera in a PDA and a phone. Therefore, it would have been obvious to one of ordinary skill in this art at the time of invention to include the digital camera and adjustment tool of Kokemohr in a phone or PDA.

For claim 47, Kokemohr does not explicitly state that the adjustment tool is located in a remote server. However, the Examiner takes Official Notice that every electrical engineer everywhere in the world at the time of this invention knew that the adjustment tool running on a computer as discussed in col. 19 could be located either on a local computer or on a remote computer that is accessible over the internet. Therefore, it would have been obvious to one of ordinary skill in this art at the time of invention to have the computer of Kokemohr function as a remote server that is accessed over the internet.

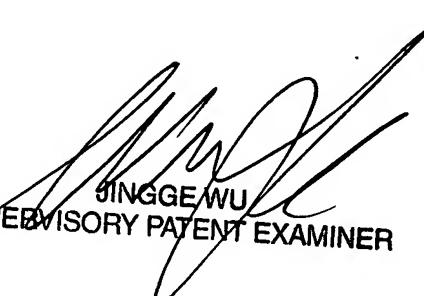
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey S. Smith whose telephone number is 571 270-1235. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jingge Wu can be reached on 571 272-7429. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSS  
June 6, 2007

  
JINGGE WU  
SUPERVISORY PATENT EXAMINER